

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01-09-2006

CORAM

THE HON'BLE MR.JUSTICE M.E.N.PATRUDU

W.P.Nos.14910/92 & 5596/97

S.Ganesan

.. Petitioner in
both petitions

Vs

1.The Union of India rep by Union Territory of
Pondicherry rep by Director of Settlements
Directorate of Survey & Land Records
Pondicherry.

2.The Commissioner of Pondicherry Municipality
Pondicherry.

3.Sri Sadurthi Vinayagar Temple Retrievel
Association, rep. by its Secretary
Bharathipuram, Pondicherry 11.

4.K.Mannankatti @ Ganesan

5.Kathavarayan

.. Respondents in
W.P.5596/97

1.The Commissioner
Pondicherry Municipality
Pondicherry.

2.The Superintendent of Police (North)
(Law and Order)
Pondicherry.

.. Respondents in
W.P.14910/92

W.P.No.14910/92:

This petition is filed to issue a writ of mandamus directing the first respondent herein to accept the property tax from the petitioner only in respect of his properties pursuant to the mutation of records transferring the said properties to his name made in File No.7384 A1/89 dated 14.8.89.

W.P.No.5596/97

Petition filed under Article 226 of Constitution of India to issue a writ of certiorari calling for the records relating to the proceedings of the first respondent in No.3402/STI/DDS/91 dated 7.2.97, and to quash the same.

For Petitioner :Mrs.Shobana Ramasubramanian

For Respondents for 1 & 2 :Mr.Chandran, SC.
for Mr.S.K.Selvaraj

For Respondent No.3 :Mr.R.Subramanian

COMMON ORDER

1.00 Both writ petitions arise out of the same cause between the same parties, hence common order.

2.00 An important question of law is involved in this case:

Whether the title and the possession of an immovable property of a party can be declared by way of writ?

3.00 Mrs.Shobana Ramasubramanian learned counsel appeared and argued for the petitioner.

4.00 Mr.Chandran learned Senior advocate appeared and argued for the respondents 1 and 2. Mr.R.Subramanian learned counsel appeared and argued for the third respondent.

5.00 The prayer of the petitioner in W.P.No.14910/92 is to direct the first respondent, the Commissioner, Pondicherry Municipality to accept the property tax from the petitioner in respect of his properties pursuant to the mutation of records. The petitioner filed W.P.No.5596/97 with a prayer to quash the proceedings of the first respondent in No.3402/STI/DDS/91 dated 7.2.97. The petitioner is claiming the ownership viz title and possession of the scheduled property. The respondents are denying the title on the ground that the scheduled property is a Government property.

6.00 The facts necessary for disposal of the writs are;

6.01 The petitioner is a legal heir of one Kandaswami Naicker. According to the petitioner, Kandaswami Naicker and Ramaswami Naicker are the owners of the land of an extent of 17 kuzhi-15/16 and the said land was taken over by the Pondicherry Administration in the

year 1889 for the purpose of formation of Road to link the village Karayamputhur with the Village Panaidikuppam.

6.02 In exchange of the said land, the Pondicherry administration has granted a land measuring 30 kuzhi in favour of Kandaswami Naicker and Ramaswami Naicker and according to the petitioner the said land is the scheduled land.

6.03 It is further stated that by a letter dated 14.10.66, the Court of the First Instance, Pondicherry affirmed the right of the said Natesa Naicker who is grand nephew of Ramaswami Naicker and Kandaswami Naicker over the said exchange of land.

6.04 The Mayor of Pondicherry by his letter dated 24.4.67 addressed to the Chief of the Contributions (Revenue Department) Pondicherry clarified that Natesa Naicker @ Nataraja Naicker had been in occupation of the said land for about 95 years and there is also a small temple named "Savuti Vinayagar" existing for about the same period of 95 years.

6.05 Basing on the above documents, the petitioner is claiming that the scheduled land is, his ancestral property.

6.06 The petitioner is also relied on the judgment dated 29.4.74 made in O.S.No.268/70 on the file of the Principal District Munsif Pondicherry in this respect.

6.07 The further case of the petitioner is that Natesa Naicker, his grand-father has executed a Will bequeathing the property, in question, in his favour thereby appointing his father as the Executor of the Will and all those facts are confirmed in the above said Original Suit.

6.08 The case of the petitioner is that the Pondicherry Municipality has transferred the ownership of land in favour of the petitioner and communication was issued on 14.8.99 effecting the mutation incorporating his name as the holder of the property and he is paying the property tax, and in the revenue records also his name is revealed as Pattadar of the lands and neither the Municipality nor the revenue authorities have claimed ownership of the said property.

6.09 While so, the Additional District Magistrate, Pondicherry issued a notice to the petitioner on 30.4.92 that he has authorised by the Government to enquire into the classification and ownership of scheduled land and the petitioner raised strong objections.

6.10 Thereafter, the petitioner approached the Municipality to pay property tax and the same is not accepted and the petitioner filed W.P.No.12183/92 questioning the action of the Government officials

and the first respondent. The said writ petition was withdrawn on 25.8.92. The contention of the petitioner is that the respondents have agreed to grant permission to him to store the bricks etc., for the construction of the temple, hence the said writ petition is withdrawn.

6.11 The contention of the petitioner is that he is in possession of the schedule properties which is his ancestral property and he is in peaceful possession and the respondents have no right over the said property.

7.00 The contention of the respondent is that the petitioner is not having title over the suit property and he has making a false plea to grab the Government property.

7.01 The respondents in the counter affidavit denied the allegations of the petitioner. It is stated that the subject matter of the property is belonging to the respondent Municipality and the petitioner has no right, title or interest whatsoever in respect of the property and the petitioner is making a false claim and tried to grab the property of the Government by way of writ petition.

7.02 It is clearly stated that the writ petition is not maintainable either in law or in facts.

7.03 The respondents have stated that the erstwhile French administration of the Pondicherry had taken certain lands measuring 17 kuzhies 15/16 veesam from Kandaswami Naicker and Ramaswami Naicker during the year 1893 for the purpose of laying road between the village Karaiyambuthur and Panayakiduppam Village in Bahour Commune it is about 35 kms away from the schedule land.

7.04 The respondents have clearly stated that in lieu of the above land the French administration has given a piece of Poromboke land bearing No.833 to an extent of 39 1/16 kuzhies at Karaiyambuthur Village in Bahour commune itself, and it is not the scheduled land.

7.05 The resolution adopted by the then French Government on 10.12.89 has been registered as a land transferable in RV.44 No.42 dated 3.6.1890. Thereafter the ancestors of the petitioner taken the possession of the same.

7.06 The respondent has stated that the petitioner fraudulently tampered with the translated version of the French Resolution dated 10.12.89 and incorporated the words bearing No.104 of Cadastre plan at Konthaslai i.e. the scheduled land and this forgery was done in order to grab the schedule land. Having forged the same, the petitioner misused the said document and used the forged document as genuine document and mislead the authorities including the Court of

the First Instance and obtained orders. It is stated that in these cases, the respondents are not parties.

7.07 It is also stated that the Mayor of Pondicherry in his letter dated 24.4.74 stated that Natesa Naicker has been in occupation and it is not stated that he is the owner.

7.08 The alleged mutation is also denied by the respondent.

8.00 Heard elaborate arguments.

9.00 The point for determination is whether the petitioner is entitled for any relief by way of writ.

10.00 Point:

10.01 The scheduled property is:

Land in the city of Pondicherry in cadastral survey No.104, re-survey No.255/1 part and 255/2 part measuring 0-16-00 Ha.

10.02 The petitioner is claiming title over the property by relying 3 documents.

10.03 The first document is report of Council General in the year 1889. The petitioner has produced a typed copy and respondent have produced certified printed copy from Archives.

10.04 For a better appreciation the said translation filed by the petitioner is reproduced.

Translation

Report of Council Generals of the year 1889

Second Meeting-10 December 1889 Page 20 and 21 The Director of the Home Department reads the following report:

Report regarding the exchange of lands.
Respected General councillors.

In 1873 at the time of the creation of the road linking the village of Kareambuthur with the village of Paneadikuppam, the colony has taken from Messrs Candasamy Naicker and Ramaswami Naicker, both sons of Coupounaicker a land measuring 17 Kuzhi 15/16 valued at 35 Rupees which

was including in the Plan of the Site of the Road. A Government land has to be given in exchange to these land owners; but the exaggerated claims they have made many times before the General Council as well as before the Administration, have not permitted to arrive at a Settlement. The service of contributions however has succeeded to made the interest parties to accept for more reasonable conditions and to be satisfied with a poramboke of an extent of 30 kuzhee, taxed at 5 fanons 11 caches and which value is 30 rupees bearing NO.104 of Cadastral plan at Konthasalai. (Underline is supplied)

I have the honour to submit to you this affair for your deliberation according to article 33 of the decree dated 25th January 1879.

The Director of Home Department

A.MATHIVET.

Mr.REPORTER: The Administration has taken a land of an extent of 17 kuzhee 15/16 valued at 35 rupees and belonging to Messrs. Candasamy Naicker and Ramaswami Naicker for the road which was created in 1873 to link the village of Kareambthur with the village Paneadikuppam.

Till today the Administration has not compensated the land owners because their claims were exaggerated. Their service of contributions has lastly made them accepted for conditions more reasonable.

Your commission can only propose to you to approve the exchange indicated in the statement enclosed which shows that the land to be exchanged are having almost the same value.

The council General Authrizes the exchange lands in question in the report of the Administration."

10.05 Thus the plain reading of the above resolution discloses that it is only recommendation and authorisation and not a document of transfer.

10.06 While so, the respondents are disputing about the mentioning of the depiction of property as bearing No.104 of Cadastral plan at Kothansalai in the said resolution. According to the respondent, it is incorporated in to the report subsequently and by tampering the original record, the words bearing No.104 of Cadastral plan at Kothansalai are added in order to claim the scheduled property.

11.07 The petitioner did not produce either the original report in order to verify the property or even the certified copy or the xerox copy of the original. A typed paper without any signature is produced and requesting the Court to accept the same as suit document. Whereas the respondents have produced the original of the French Report.

10.08 The original translation version was also produced after duly certified. The counsel for the petitioner objected to verify the said document. The said objection is rejected as it is a public document. On one hand the petitioner did not produce the original or the certified copy of the French Report. Instead the petitioner has filed a Typed copy saying that it is the French Report. While so, the respondents have produced the xerox copy of the printed report duly attested by the Assistant Director of Archives, National Archives of India, Record Center, Pondicherry. Therefore, the National Archives of India has produced the real document which are found at page No 20 and it is in French language.

10.09 On the face of the document it is clearly noticed that the sentence of the paragraph has closed with 30 Rupees.

10.10 Whereas the document relied by the petitioner shows that after the word of 30 Rupees, the sentence "bearing No.104 of Cadastral plan at Kothansalai" has been incorporated.

10.11 This Court has no hesitation to hold that a forged document has been filed in the Court and used as genuine document to claim property rights over the Government land. For which a suitable action has to be initiated against the petitioner for committing the offence of forgery and using forgery document as genuine document in a Court of Law: Hence the Principal District Judge, Pondicherry is directed to initiate action against the petitioner and Registry is directed to mark copy of this order and copies of the typed document filed by petitioner and copy of the certified xerox printed document filed by the respondent for necessary action by the Principal District Judge.

10.12. The petitioner has also produced the order of the Director of Settlement dated 7.2.97 in No.3402/STI/DDS/91 which is impugned in W.P.No.5596/97 wherein the petitioner is prayed this Court to quash the same.

10.13 In this impugned order the Director of Settlement has clearly observed at page No.10 as follows.

"So far as the deliberation of the Council General dated 10.12.1989 is concerned, it was found that the words "bearing No.104 of Cadastrale Plan at Kothasalai" as were found in the English translation submitted by Thiru S.Ganesan were not available in the original French version of the said document. Hence, it is a case of fraudulent interpolation. Moreover, a scrutiny of the exchange document No:R.V.44 No.142 dated 3.6.1890 clearly shows that in exchange of the land at Karayambuthur taken from Tvl.Kandasam and Ramasamy Naickker, the forefathers of the petitioner, the then French administration had provided them with a piece of land at Karayamuthur itself. This clearly disproves the contention of Thiru S.Ganesan that the said land was received by his forefathers in exchange of the land taken from them at Karayambuthur."

10.14 Therefore, this act of interpolation is not canvassed before this Court for the first time by the respondent. In fact this fact has been brought before the concerned authority on 7.2.97 by the respondent and the Director of the Settlement has mentioned about it. Despite of that the petitioner is claiming title and ownership over the subject matter by filing a forged document before High Court: It is unsigned, but it is filed by the petitioner as material document and it was reflected in the sworn affidavit, thus the petitioner is relying on the said forged document.

10.15 In the instant case, the petitioner is claiming title and the respondents are denying the same: It is on the basis of the resolution of the Council General dated 10.12.89.

10.16 A careful perusal of the Council General deliberations clarifies that it is only a recommendation. The scheduled land is not transferred in the name of the ancestral forefathers of the petitioner through this document. It is only a report of the Council General in the year 1989.

10.17 The entire case of the petitioner is developed on the basis of this document. Until and Unless the petitioner prove his title he is not entitled to any relief: The title has to be established in the civil Court. The petitioner is claiming title and possession and this case can be decided only after recording the evidence, after

verifying the necessary documents and the genuineness of all those contents. Both the oral and documentary evidence has to be adduced by both parties then only the civil Court can come to the conclusion about the title of the scheduled property.

10.18 The petitioner ought to have filed a suit for declaration and title, and instead of that he has approached this Court.

11.00 In my considered opinion it is a fit case to award compensatory cost against the petitioner, but I am not doing so because it is for the civil Court to verify the genuineness of the documents through an independent enquiry and take suitable action.

12.00 The counsel for the petitioner requested to grant status quo as on today and it is stated that the petitioner is in possession of the property. The contention of the petitioner is that he is in possession but the respondents are denying the same. If status quo is granted and under the guise of the said order, the petitioner may even enter into the possession or continue in the possession and get interim relief from the civil Court. Hence the said request is rejected.

13.00 Since, there is every possibility that the petitioner will approach the civil Court at Pondicherry to get relief of injunction, the Registry is directed to communicate this order to the District Judge, Pondicherry, who in turn shall communicate to the civil courts in Pondicherry so that the civil Courts will verify the necessary documents and hear both parties before issuing any interim orders. This direction is given because the subject matter of the property is a Government property and further the parties are indulging in frivolous litigation and approaching the Courts and getting interim direction and continuing in the possession of the property for years together and enjoying the fruits wrongfully. The direction does not mean that the civil Courts should not give any interim relief, but before granting any interim relief, the Court has to verify all the documents and whether any prima facie case is made out for granting interim relief.

14.00 With the above observation the writ petitions are dismissed. No costs.

jikr

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

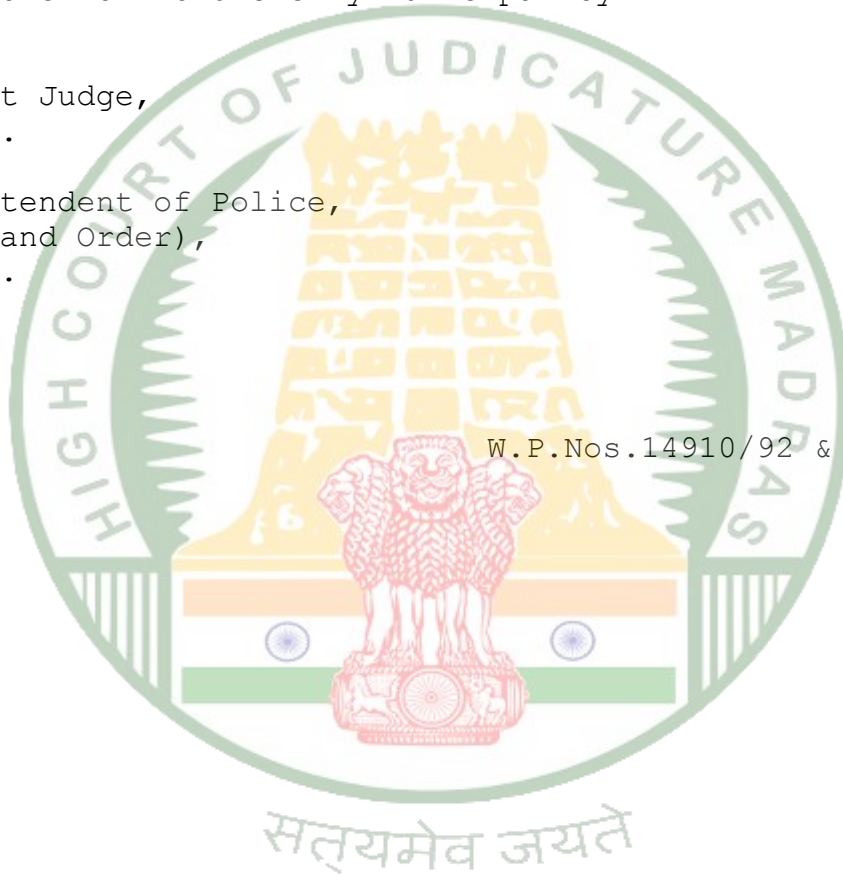
To

- 1.The Director of Settlements,
The Union of India rep by Union Territory of
Pondicherry
Directorate of Survey & Land Records
Pondicherry.
- 2.The Commissioner of Pondicherry Municipality
Pondicherry.
3. The District Judge,
Pondicherry.
4. The Superintendent of Police,
(North Law and Order),
Pondicherry.

jp (co)

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